

ADMINISTRATIVE ORDER
ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	
BAMA USED AUTO PARTS)	ADMINISTRATIVE
4119 MOBILE HIGHWAY)	ORDER No 10-XXX-WP
MONTGOMERY, ALABAMA)	
)	
<u>GENERAL NPDES PERMIT No. ALG 180018 (Expired)</u>		

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.) and the Alabama Water Pollution Control Act, Ala. Code §§22-22-1 to 22-22-14, (2006 Rplc. Vol.); the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code") promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, the Alabama Department of Environmental Management (hereinafter "the Department") makes the following FINDINGS:

1. Bama Used Auto Parts Inc of Montgomery (originally permitted as Bama Auto Parts and hereinafter "Bama Parts") operates a salvage yard facility (hereinafter the "Facility") located at 4119 Mobile Highway, Montgomery, Montgomery County, Alabama. As set forth in this Administrative Order, the Facility discharges pollutants from point source(s) into an unnamed tributary to Catoma Creek, a water of the State.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code §22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387. In addition, the Department is authorized to administer and

enforce the provisions of the Alabama Water Pollution Control Act, Ala. Code §§22-22-1 through 22-22-14 (2006 Rplc. Vol.).

4. On September 17, 1997, the Department issued General National Pollutant Discharge Elimination System (hereinafter “NPDES”) Permit Number ALG180018 (hereinafter the “Permit”). The Permit established limitations on the discharge of pollutants from a point source, designated therein as outfall number DSN001-1 into Catoma Creek, a water of the State. The Permit required that Bama Parts monitor its discharges and submit semi-annually Discharge Monitoring Reports (hereinafter “DMRs”) to the Department describing the analytical results. The Permit required that Bama Parts maintain in good working order all systems used by it to achieve compliance with the terms and conditions of the Permit, and Bama Parts was also required to maintain documentation and implementation of a Best Management Practices (hereinafter “BMP”) plan.

5. Permit Condition II. F. 1. a. requires that the permittee authorized to discharge under the Permit, who wishes to continue to discharge upon the expiration of the Permit, submit a Renewal Notice of Intent (hereinafter “NOI”) to be covered by the reissued General Permit. Such NOI shall be submitted at least ninety days prior to the expiration date of the Permit. Permit Condition II. F. 1. b. states that failure of the permittee to submit a NOI for reauthorization under the permit at least ninety days prior to the Permit’s expiration will void the automatic continuation of the authorization to discharge under the Permit as provided by ADEM Administrative Code r. 335-6-6-.06. Should the Permit not be reissued for any reason prior to its expiration date, permittees who failed to meet the ninety-day submittal deadline will be illegally discharging without a permit after the expiration date of the Permit. General Permit ALG180018 expired on September 30, 2002 and Bama Parts failed to re-apply for coverage in 2002 and again in 2007.

6. On May 8, 2008, the Department conducted a Compliance Evaluation Inspection (hereinafter “CEI”) at the Facility. The Department documented the following

during the inspection: The Permit coverage had expired on September 30, 2002 and a renewal NOI with fee had yet to be submitted to the Department. Bama Parts failed to submit semi-annual DMRs for outfall DSN001-1 for 2003 through May 2008. Bama Parts failed to maintain in good working order all systems used by it to achieve compliance. Bama Parts failed to prepare and implement a Best Management Practices (hereinafter "BMP") Plan. Bama Parts failed to maintain BMP inspection logs and BMP training records for a period of three years on-site.

7. Ala. Code § 22-22-9(e) requires an operator to respond within the specified time frame to a notice of violation or non-compliance by the Department.

8. On July 23, 2008 Bama Parts was issued a Notice of Violation (hereinafter "NOV") and provided a written copy of the CEI Report. The NOV required that Bama Parts submit to the Department within thirty days from receipt of the NOV a complete NOI and a \$645 application fee for re-issuance of the Permit as well as a written report detailing the steps that have been taken or are being taken to correct the violations noted in the NOV. Bama Parts failed to respond to the NOV within the specified time periods, which is a violation of Ala. Code § 22-22-9(e).

9. Mr. Johnny Brooks was listed as the Facility owner when the Permit expired on September 30, 2002. According to the Secretary of State business listing, the registered agent changed from Johnny T. Brooks on December 20, 2002. Mr John Paul Akwuba is the current registered agent and was the Facility contact during inspections by the Department on May 8, 2008 and July 27, 2010.

10. ADEM Administrative Code r. 335-6-6-.03 (2) states that no person required to apply for a stormwater discharge permit by 40 CFR 122.26 (2000) shall discharge pollutants into waters of the State without first having applied for a valid NPDES permit, coverage under a valid General NPDES Permit, or coverage under a valid NPDES Permit. New dischargers shall obtain a valid NPDES Permit prior to conducting any activity for which application for a stormwater discharge permit is required by 40 CFR 122.26 (2000).

11. Ala. Code § 22-22-9)i)(3) (2006 Rplc. Vol.) requires every person to apply for and obtain a permit before discharging new or increased pollution into any waters of the state.

12. On July 27, 2010 the Department conducted a CEI at the Facility in response to a complaint received by the Department on June 10, 2010. The Department documented the following during the inspection. Bama Parts failed to reapply for General permit coverage. Bama Parts failed to prepare and implement a BMP Plan. There were fuels tanks, tires and various vehicle parts observed throughout the Facility. The inspector also observed holes in the roof over the parts storage area, oil/fluid spills and contaminated soil.

13. Pursuant to Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit that delayed compliance may have confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided; however, the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00 each day that such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY:

Violations consisted of operating without a permit; failure to implement adequate BMPs and failure to respond to an NOV within the specified timer period. Considering the general nature of each violation, the magnitude and duration of any non-compliant discharge(s), the characteristics of any pollutant discharged, their effects, if any, on

impaired waters, and any, on impaired waters, and any available evidence of irreparable harm to the environment or threat to public, the Department determined the base penalty to be \$7,000.00.

B. THE STANDARD OF CARE: In considering this factor, the Department noted the violation of operating without a permit was a non-technical requirement and easily avoided. In consideration of the standard of care provided by Bama Parts, the Department enhanced the penalty by an additional \$1,500.00.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Bama Parts avoided certain costs associated with BMPs, sample collection and analysis, the submittal of applications. Bama Parts was operating without a permit and therefore also failed to monitor for stormwater semi-annually 2008 through the first six months of 2010. The Department has determined that there has been an economic benefit associated with Bama Parts' failure to re-apply for permit coverage. The calculated avoided costs would be \$1,970.00.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department is not aware of any efforts made by Bama Parts to minimize or mitigate the effects upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Bama Parts has a history of violations. Bama Parts failed to re-apply for permit coverage in 2002 and 2007. Also a July 23, 2008 NOV informed Bama Parts that Permit ALG180018 had expired, but Bama Parts failed to respond to the NOV. In consideration of the history of violations by Bama Parts, the Department enhanced the penalty by an additional \$2,500.00.

F. THE ABILITY TO PAY: Bama Parts has not alleged an inability to pay the civil penalty.

G. The civil penalty is summarized in Attachment 1.

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-10, 22-22A-5(12), 22-22A-5(18), and 22-22-9(i) (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, not later than forty-five days after receipt of this Order, Bama Parts shall pay to the Department a civil penalty in the amount of **\$12,970.00** for the violations stated herein.

B. That all penalties due pursuant to this Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. That Bama Parts is required to submit to the Department a complete application for enrollment in the Department's Electronic DMR Reporting System Program (hereinafter, "E2 Program"), not later than thirty days after the effective date of coverage under the General NPDES permit. If the Department determines through its review of the submitted application that the submittal is not sufficient for Bama Parts to participate in the E2 Program, then Bama Parts must modify the application so that it is sufficient. Modifications to the application, if required, shall be submitted to the Department no later than fourteen days after receipt of the Department's comments. Upon acceptance by the Department into the E2 Program, Bama Parts must begin the electronic submittals of DMRs through the E2 Program no later than the 28th day of the month following the first complete monitoring period. Bama Parts must fully implement all aspects of the E2 Program including the cessation of federal paper DMR submittals, if applicable, no later than 180 days after acceptance into the E2 Program, unless an extension is granted in writing by the Department. Bama Parts further must abide by all terms, conditions, and limitations of the E2 Program immediately upon acceptance into the E2 Program.

D. That Bama Parts shall prepare and submit to the Department, not later than thirty days after the receipt of this Order, a complete NOI and an application fee of \$645.00.

E. That Bama Parts shall prepare and submit to the Department, not later than thirty days after the receipt of this Order, an Engineering Report that identifies all potential causes of noncompliance and that includes a schedule for implementation of the changes necessary for Bama Parts to achieve compliance with NPDES Permit Number ALG180018 (i.e., a Compliance Plan) upon effective date of permit coverage. The Engineering Report shall identify all outfalls with latitudinal and longitudinal coordinates and receiving stream(s). The Engineering Report should include the preparation of a BMP Plan. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the report is not sufficient to accomplish compliance, then Bama Parts shall modify the report so that it does accomplish compliance. Modifications to the Engineering Report, if required, shall be submitted to the Department no later than thirty days after receipt of the Department's comments.

F. That, immediately upon the effective date of coverage, Bama Parts must comply with all terms, conditions, and limitations of its NPDES Permit.

G. That final approval and issuance of this Order are subject to the requirement that the Department provide notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

H. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and, therefore, unenforceable, the remaining provision hereof shall remain in full force and effect.

I. That, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State

or local law, and shall not be construed to waive or relieve Bama Parts of its obligations to comply in the future with any permit.

J. That the issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Bama Parts for the violations cited herein.

K. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against Bama Parts for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____ 2010.

Lance R. Lefleur
Director

ATTACHMENT 1

PENALTY CALCULATION WORKSHEET

<u>Violations*</u>	<u>Number of Violations*</u>	<u>Seriousness of Violation & Base Penalty*</u>	<u>Standard of Care*</u>	<u>History of Previous Violations*</u>
Operating without a permit (failed to renew expired General Permit in 2007)	1	\$3,000	\$1,500	\$1,500
1 Failure to implement BMPs	1	\$4,000		\$1,000
	2	\$7,000	\$1,500	\$2,500

Economic Benefit: \$1,970

Mitigating Factors: None Observed

Ability to Pay: Unknown

Civil Penalty: **\$12,970.00**

Footnote

***See the "Findings" of the order for a detailed description of each violation and the penalty factors.**